

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
25 SIGOURNEY STREET  
HARTFORD, CT 06106-5033

██████████ 2013  
Signature Confirmation

Client ID # ██████████  
Request #560124

NOTICE OF DECISION

PARTY

██████████  
██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") granting Long Term Care Medicaid benefits effective ██████████ 2013.

On ██████████ 2013, the Appellant requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.

On ██████████ ██████████ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████ 2013.

On ██████████ 2013 in accordance with sections 17b-60, 17-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, Appellant's daughter, Power of Attorney ("POA")  
Christine Moffitt, Department's Representative  
Miklos Mencseli, Hearing Officer

## **STATEMENT OF THE ISSUE**

The issue to be decided is whether or not the Department was correct in its determination of the effective date of the Applicant's Long Term Care Medicaid benefits.

## **FINDINGS OF FACT**

1. On [REDACTED] 2013, the Department received an application for Medicaid Long Term Care assistance for the Appellant. (Exhibit H: Department's case narratives screen printouts)
2. The Appellant is a resident of Woodlake facility.
3. The Department determined that the Appellant's POA closed a CD account [REDACTED] at Rockville Bank on [REDACTED] 2011 in the amount of \$55,006.80. (Summary, Exhibit D: Rockville Bank verifications)
4. The Rockville Bank CD is a joint account between the Appellant and POA. (Exhibit D, Testimony)
5. The Appellant is listed as Primary on the account with the POA listed as Joint. (Exhibit D)
6. On [REDACTED] 2013, the Department sent the Appellant's POA a W-138LTC We Need Verification from You form requesting verification of where the funds in the amount of \$55,006.80 were deposited or spent from the closed CD account. (Summary, Exhibit F: Department's notice dated [REDACTED] 13)
7. The POA provided verification that the funds were deposited into her personal account at First Niagara on [REDACTED] 2011. (Exhibit E: First Niagara Bank statement dated [REDACTED] 11)
8. The POA had legal right to the funds as she was a joint holder of the account. (Testimony)
9. The POA spent the funds over time for expenses. (Testimony)
10. The POA is unable to provide verifications as to how the funds were spent. (Testimony)
11. On [REDACTED] 2013, the Department sent the Appellant's daughter, [REDACTED] [REDACTED] ("POA") a W-495A Transfer of Assets Preliminary Decision Notice form. The Department's initial decision is the transfer was done in order to be eligible for assistance. (Exhibit E: W-495A dated [REDACTED]-13)

12. On [REDACTED] 2013, the Department sent the Appellant's POA a W-495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim form. The Department determined that the Appellant's POA transfer of funds to her personal account as she was a joint holder of the account did not meet the criteria for an allowable transfer of funds. The Department initiated a penalty period that will last 4.91 months due to the transfer of funds. (Exhibit A: W-495B dated [REDACTED]-13, Exhibit B: penalty calculation)
13. On [REDACTED] 2011, the Department sent the Appellant's POA a W-495C Transfer of Assets Final Decision Notice form. The form states the Appellant is eligible for certain Medicaid benefits effective [REDACTED] 2013, a penalty period will begin [REDACTED] 2013 and continue until [REDACTED] 2013. During the penalty period, Medicaid will not pay for any long term care services. (Exhibit A: W- 495C dated 10-11-13)
14. The Department granted the Applicant's Long Term Care Medicaid benefits effective [REDACTED], 2013 and denied eligibility for the period of [REDACTED] 2013 through [REDACTED] 2013 imposing a 4.91 months penalty due to a transfer of assets penalty. (Exhibit G: NOA dated [REDACTED]-13, Exhibit H)

### **CONCLUSIONS OF LAW**

1. Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance program to provide medical assistance to eligible persons in Connecticut.
2. Section 17b-2 of the Connecticut General Statute authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
3. Section 17b-80(a) of the Connecticut General Statute states that the Department shall grant aid only if the applicant is eligible for that aid.
4. Uniform Policy Manual ("UPM") § 3029.05 provides the transfer of assets basic provisions.

#### A. General Statement

There is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in 3029.05 C. This period is called the penalty period, or period of ineligibility.

#### B. Individuals Affected

1. The policy contained in this chapter pertains to institutionalized individuals and to their spouses.
2. An individual is considered institutionalized if he or she is receiving:
  - a. LTCF services; or
  - b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; or
  - c. home and community-based services under a Medicaid waiver (cross references: 2540.64 and 2540.92).
5. UPM § 3029.05 (C) (1)(2) provides that the look-back date for transfers of assets is a date that is 60 months before the first date on which both the following conditions exist: the individual is institutionalized and the individual is either applying for or receiving Medicaid.
6. The Department correctly determined that the transfer in [REDACTED] 2011 occurred within the 60 month look back period.
7. UPM § 3029.05 D (1) (2) provides the Department considers transfers of assets made within the time limits described in 3029.05 C, on behalf of an institutionalized individual or his or her spouse by a guardian, conservator, person having power of attorney or other person or entity so authorized by law, to have been made by the individual or spouse. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset.
8. UPM § 4010.10 A (1) provides for the General Principles for assets held jointly. Subject to the limitations described below, personal property such as a bank account held jointly by the assistance unit and by another person is counted in full toward the asset limit.
9. UPM § 4010.10 A (3) (a) provides an individual other than the spouse of an assistance unit member is considered merely the record owner of an account or similar assets held jointly with the unit member. This is true regardless of the time period the individual has been joint holder of the asset.
10. UPM § 4010.10 C (3) provides the Department investigates an improper transfer of assets has occurred if, within the limits described in Section 3025; a joint holder, other than the spouse, liquidates an asset of which the unit is also a joint holder. This is true regardless of the length of time the joint holder has held the asset jointly with the assistance unit.

11. The Appellant and the POA, her daughter were joint holders of the Rockville Band CD account.
12. The Appellant's power of attorney made a transferred \$55,006.80 on [REDACTED] 2011.
13. UPM § 3029.10 (E) provides an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services if the individual, or his or her spouse, provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.
14. UPM § 3029.10 (F) provides an institutionalized individual, or his or her spouse, may transfer an asset without penalty if the individual provides clear and convincing evidence that he or she intended to dispose of the asset at fair market value.
15. UPM § 3029.10 (G) provides an institutionalized individual, or his or her spouse, may transfer an asset without penalty if the individual provides clear and convincing evidence that he or she intended to dispose of the asset in return for other valuable consideration. The value of the other valuable consideration must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty. (Cross Reference: 3029.20)
16. The Appellant and her POA did not provide clear and convincing evidence that the transfer was made exclusively for a purpose other than to qualify for assistance.
17. UPM § 3029.05 (E) (1) (2) provides the penalty period begins as of the later of the following dates: the first day of the month during which assets are transferred for less than fair market value, if this month is not part of any other period of ineligibility caused by a transfer of assets; or the date on which the individual is eligible for Medicaid under Connecticut's State Plan and would otherwise be eligible for Medicaid payment of the LTC services described in 3029.05 B based on an approved application for such care but for the application of the penalty period, and which is not part of any other period of ineligibility caused by a transfer of assets.
18. UPM § 3029.05 (F) (1) (2) (a) (b) (1) (2) (3) (4) provides the length of the penalty period consists of the number of whole and/or partial months resulting from the computation described in 3029.05 F. 2. The length of the penalty period is determined by dividing the total uncompensated value of all assets transferred on or after the look-back date described in 3029.05 C by the average monthly cost to a private patient for LTCF services in Connecticut. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application. For recipients, the

average monthly cost for LTCF services is based on the figure as of: the month of institutionalization; or the month of the transfer, if the transfer involves the home, or the proceeds from a home equity loan, reverse mortgage or similar instrument improperly transferred by the spouse while the institutionalized individual is receiving Medicaid, or if a transfer is made by an institutionalized individual while receiving Medicaid (Cross Reference: 3029.15). Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer. Once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status.

19. UPM § 3029.05 (G) (1) (a) (b) (c) (2) provides that during the penalty period, the following Medicaid services are not covered: LTCF services; and services provided by a medical institution which are equivalent to those provided in a long-term care facility; and home and community-based services under a Medicaid waiver. Payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid.
20. The Department correctly determined that the \$55,006.80 transfer of assets was done for the purpose of qualifying for assistance.
21. The Department correctly calculated a 4.91 months penalty period (\$55,006.80 / 11,183.00 average cost of care equals 4.91 months.)
22. UPM § 1560.10 (A) provides for begin dates of Medicaid Assistance. The beginning date of assistance for Medicaid may be one of the following: the first day of the first, second or third month immediately preceding the month in which the Department receives a signed application when all non-procedural eligibility requirements are met and covered medical services are received at any time during that particular month.
23. The Department correctly began the penalty period on [REDACTED] 2013, based on an application date of [REDACTED] 2013.
24. The Department correctly granted the Appellant's Medicaid effective [REDACTED] 2013, due to transfer of assets penalty.

### **DISCUSSION**

The Appellant's POA argued she had a legal right to the funds as a joint holder of the account. The funds were transferred within the 60 month look back period and were available to the Appellant at the time of the transfer. The funds were in the Appellant's name as primary holder of the account. The Department correctly determined the Appellant is subject to a transfer of asset penalty. In regards to an early application that was filed, it was denied in [REDACTED] 2013. The Appellant or her representatives did not file a hearing request for the denial. It is beyond the

the 60 day limit to request a fair hearing on that denial.

**DECISION**

The Appellant's appeal is **DENIED**.

A handwritten signature in black ink, appearing to read 'Miklos Mencseli', written over a horizontal line.

Miklos Mencseli  
Hearing Officer

C: John Hesterberg, Operations Manager, DSS R.O. #11 Manchester

### **RIGHT TO REQUEST RECONSIDERATION**

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within **25** days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a(a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Legal Counsel, Regulations, and Administrative Hearings, 25 Sigourney Street, Hartford, CT 06106.

### **RIGHT TO APPEAL**

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 25 Sigourney Street, Hartford, CT 06106. A copy of the petition must also be served on all parties to the hearing.

The **45** day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than **90** days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or his designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.



